

ASSEMBLY BILL

No. 1450

Introduced by Assembly Member Garcia

January 8, 2014

An act to amend Section 48900 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as introduced, Garcia. Pupils: grounds for suspension and expulsion: bullying.

Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the superintendent of the school district or the principal of the school determines that the pupil has committed any of various specified acts, including, but not limited to, engaging in acts of bullying by means of an electronic act. Existing law further defines “electronic act” as both the creation and transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, as specified.

This bill would instead, for purposes of pupil suspension or recommendation for expulsion from a school define “electronic act” as either the creation or transmission of that communication, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 48900 of the Education Code is amended to read:

48900. A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stole or attempted to steal school property or private property.

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew

1 packets, and betel. However, this section does not prohibit use or
2 possession by a pupil of his or her own prescription products.

3 (i) Committed an obscene act or engaged in habitual profanity
4 or vulgarity.

5 (j) Unlawfully possessed or unlawfully offered, arranged, or
6 negotiated to sell drug paraphernalia, as defined in Section 11014.5
7 of the Health and Safety Code.

8 (k) Disrupted school activities or otherwise willfully defied the
9 valid authority of supervisors, teachers, administrators, school
10 officials, or other school personnel engaged in the performance of
11 their duties.

12 (l) Knowingly received stolen school property or private
13 property.

14 (m) Possessed an imitation firearm. As used in this section,
15 “imitation firearm” means a replica of a firearm that is so
16 substantially similar in physical properties to an existing firearm
17 as to lead a reasonable person to conclude that the replica is a
18 firearm.

19 (n) Committed or attempted to commit a sexual assault as
20 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
21 Code or committed a sexual battery as defined in Section 243.4
22 of the Penal Code.

23 (o) Harassed, threatened, or intimidated a pupil who is a
24 complaining witness or a witness in a school disciplinary
25 proceeding for purposes of either preventing that pupil from being
26 a witness or retaliating against that pupil for being a witness, or
27 both.

28 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
29 sold the prescription drug Soma.

30 (q) Engaged in, or attempted to engage in, hazing. For purposes
31 of this subdivision, “hazing” means a method of initiation or
32 preinitiation into a pupil organization or body, whether or not the
33 organization or body is officially recognized by an educational
34 institution, which is likely to cause serious bodily injury or personal
35 degradation or disgrace resulting in physical or mental harm to a
36 former, current, or prospective pupil. For purposes of this
37 subdivision, “hazing” does not include athletic events or
38 school-sanctioned events.

39 (r) Engaged in an act of bullying. For purposes of this
40 subdivision, the following terms have the following meanings:

(1) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

(A) Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property.

(B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(2) (A) “Electronic act” means the creation ~~and~~ or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(I) Posting to or creating a burn page. “Burn page” means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). “Credible impersonation” means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). “False profile” means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

1 (B) Notwithstanding paragraph (1) and subparagraph (A), an
2 electronic act shall not constitute pervasive conduct solely on the
3 basis that it has been transmitted on the Internet or is currently
4 posted on the Internet.

5 (3) “Reasonable pupil” means a pupil, including, but not limited
6 to, an exceptional needs pupil, who exercises average care, skill,
7 and judgment in conduct for a person of his or her age, or for a
8 person of his or her age with his or her exceptional needs.

9 (s) A pupil shall not be suspended or expelled for any of the
10 acts enumerated in this section unless the act is related to a school
11 activity or school attendance occurring within a school under the
12 jurisdiction of the superintendent of the school district or principal
13 or occurring within any other school district. A pupil may be
14 suspended or expelled for acts that are enumerated in this section
15 and related to a school activity or school attendance that occur at
16 any time, including, but not limited to, any of the following:

- 17 (1) While on school grounds.
18 (2) While going to or coming from school.
19 (3) During the lunch period whether on or off the campus.
20 (4) During, or while going to or coming from, a
21 school-sponsored activity.

22 (t) A pupil who aids or abets, as defined in Section 31 of the
23 Penal Code, the infliction or attempted infliction of physical injury
24 to another person may be subject to suspension, but not expulsion,
25 pursuant to this section, except that a pupil who has been adjudged
26 by a juvenile court to have committed, as an aider and abettor, a
27 crime of physical violence in which the victim suffered great bodily
28 injury or serious bodily injury shall be subject to discipline pursuant
29 to subdivision (a).

30 (u) As used in this section, “school property” includes, but is
31 not limited to, electronic files and databases.

32 (v) For a pupil subject to discipline under this section, a
33 superintendent of the school district or principal may use his or
34 her discretion to provide alternatives to suspension or expulsion
35 that are age appropriate and designed to address and correct the
36 pupil’s specific misbehavior as specified in Section 48900.5.

- 1 (w) It is the intent of the Legislature that alternatives to
- 2 suspension or expulsion be imposed against a pupil who is truant,
- 3 tardy, or otherwise absent from school activities.

O